

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets



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February 5, 2004

David Aronow
President
Metropolitan Telecommunications of Maine, Inc. d/b/a MetTel
44 Wall Street
6th Floor
New York, NY 10005

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Aronow:

Verizon New England Inc., d/b/a Verizon Maine, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic – Maine (“Verizon”) a New York corporation, with principal place of business at 185 Franklin Street, Boston, Massachusetts 02110, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the “Act”), Metropolitan Telecommunications of Maine, Inc. d/b/a MetTel (“MetTel”), a Delaware corporation, with principal place of business at 44 Wall Street, 6th Floor, New York, New York 10005, wishes to adopt the terms of the Interconnection Agreement between NUI Telecom, Inc. (“NUI”) and Verizon that was approved by the Maine Public Utilities Commission (the “Commission”) as an effective agreement in the State of Maine, as such agreement exists on the date hereof after giving effect to operation of law (the “Terms”). I understand MetTel has a copy of the Terms. Please note the following with respect to MetTel’s adoption of the Terms.

1. By MetTel’s countersignature on this letter, MetTel hereby represents and agrees to the following five points:
 - (A) MetTel adopts (and agrees to be bound by) the Terms of the NUI/Verizon agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that MetTel shall

be substituted in place of NUI Telecom, Inc. and NUI in the Terms wherever appropriate.

- (B) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon that no longer applies under the Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), which became effective on October 2, 2003. In light of the effectiveness of the Triennial Review Order, any reasonable period of time for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act (*see, e.g.*, 47 CFR Section 51.809(c)).
- (C) Notice to MetTel and Verizon as may be required under the Terms shall be provided as follows:

To: Metropolitan Telecommunications of Maine, Inc. d/b/a
MetTel
Attention: David Aronow
Legal Department
44 Wall Street, 6th Floor
New York, NY 10005
Telephone Number: 212-607-2003
Facsimile Number: 212-635-5074
Internet Address: daronow@mettel.net

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

- (D) MetTel represents and warrants that it is a certified provider of local telecommunications service in the State of Maine, and that its adoption of the Terms will cover services in the State of Maine only.
 - (E) In the event an interconnection agreement between Verizon and MetTel is currently in effect in the State of Maine (the "Original ICA"), this adoption shall be an amendment and restatement of the operating terms and conditions of the Original ICA, and shall replace in their entirety the terms of the Original ICA. This adoption is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. Any outstanding payment obligations of the parties that were incurred but not fully performed under the Original ICA shall constitute payment obligations of the parties under this adoption.
 - (F) Verizon's standard pricing schedule for interconnection agreements in the State of Maine (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to MetTel's adoption of the Terms. MetTel should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.
2. MetTel's adoption of the NUI Terms shall become effective on February 19, 2004. Verizon shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by an authorized officer of MetTel. The term and termination provisions of the NUI/Verizon agreement shall govern MetTel's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on April 14, 2004.
 3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of MetTel's 252(i) election.
 4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties

imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.

5. Verizon reserves the right to deny MetTel's adoption and/or application of the Terms, in whole or in part, at any time:
 - (a) when the costs of providing the Terms to MetTel are greater than the costs of providing them to NUI;
 - (b) if the provision of the Terms to MetTel is not technically feasible; and/or
 - (c) to the extent that Verizon otherwise is not required to make the Terms available to MetTel under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.¹ Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.² Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.³ In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.⁴
7. Should MetTel attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

¹ Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ("*FCC Remand Order*") ¶44, *remanded*, *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

² For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

³ *See, e.g.*, 47 C.F.R. Section 51.809(c).

⁴ *FCC Internet Order* ¶ 82.

8. In the event that a voluntary or involuntary petition has been or is in the future filed against MetTel under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an “Insolvency Proceeding”), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and MetTel’s adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of MetTel resulting from MetTel’s adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

SIGNATURE PAGE

Please arrange for a duly authorized representative of MetTel to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON NEW ENGLAND INC., D/B/A VERIZON MAINE

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

Reviewed and countersigned as to points A, B, C, D, E and F of paragraph 1:
MetTel objects to Verizon's continued refusal to remove the first three sentences in paragraph 6, which state ...”For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251 (b) (5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 (“FCC Internet Order”), which held that Internet traffic constitutes “information access” outside the scope of the reciprocal compensation obligations set forth in section 251 (b) (5) of the Act”. This language is nothing more than a position statement by Verizon. The FCC Order, which Verizon refers to, speaks for itself and MetTel does not agree with Verizon's interpretation of said order. It has no place in an adoption letter. The only language necessary is the cite to the FCC's Internet Order as the basis for any compensation to be paid for Internet traffic.

Verizon's insistence upon adding its interpretation of the FCC order into the agreement is, in our opinion, a violation of its obligation to negotiate in good faith. MetTel shall sign the letter under duress and without prejudice in order to avoid delay caused by Verizon in adopting the Agreement.

METROPOLITAN TELECOMMUNICATIONS OF MAINE, INC. D/B/A METTEL

David Aronow
President

c: M. Miller – Verizon